



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2004

Mr. Albert López
Lopez & Smith
3355 Cherry Ridge, Suite 100
San Antonio, Texas 78230

OR2004-0768

Dear Mr. López:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195544.

The City of Laredo (the "city"), which you represent, received a request for

a complete copy of all personnel records maintained on [the requestor] by the [city's] Civil Service Commission.

My request includes, but is not limited to all documents which refer to [the requestor] by name, employee number, social security number or any other individual identifying information used by your agency. This request includes all matters pertaining to my work performance including employee evaluations, adverse actions including reprimands, suspensions with or without pay, employee warnings, payroll records, and work logs, i.e. writings delineating the performance of my work duties while at [the city], as well as any information pertaining to IA No. 03-230.

You indicate that you will provide the requestor with some responsive information but state that the city "wishes to withhold from disclosure the file maintained by the Laredo Police Department [(the "department")] internal affairs division," which you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. You indicate that the city has adopted chapter 143 of the Local Government Code. Section 143.089 provides in pertinent part:

(a) The director [of the fire fighters' or police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

....

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter

....

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Govt. Code § 143.089(a), (g). Thus, section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers and fire fighters: one that must be maintained by the city's civil service director or his designee and another that may be maintained by the city's fire or police department. In cases in which a police or fire department investigates a police officer or fire fighter's misconduct and takes disciplinary action against the individual, the department is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).¹ *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer or fire fighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to a police officer or fire fighter's

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055.

alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer or fire fighter's employment relationship with the department and that is maintained in a department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the submitted information is part of the department's personnel files and therefore is confidential under section 143.089(g) of the Local Government Code. Based on your contention that this information is contained in the department's personnel files, we agree that the submitted information is confidential under section 143.089(g).

Although you state that the "termination of [the requestor] did not result from a disciplinary action in accordance with § 143.001, et. seq.," the submitted information nevertheless contains records relating to the dismissal of a police officer for violation of department policy. Removal of an officer constitutes disciplinary action prescribed by chapter 143. See Local Gov't Code §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). While this type of information may be kept in the department's personnel file, it must also be kept in the civil service personnel file. See Local Gov't Code §§ 143.052, .089(a)(2), (3). You state, however, that this officer "failed to complete his probationary period as a police officer" and contend that

[b]ecause probationary employees are not subject to the disciplinary provisions of the civil service statute, the Firefighters' and Police officers' Civil Service Commission of the City of Laredo, the Police Department need not sent [sic] to the Civil Service Commission their section 143.089(g) investigatory file on dismissed probationary employees as that is only required for full-fledged employees and only when the investigation results in disciplinary action under § 143.001, et. seq. See Loc. Gov't Code § 143.089(a).

Section 143.027 of the Local Government Code provides in pertinent part:

(a) A person appointed to a beginning position in the fire or police department must serve a probationary period of one year beginning on that person's date of employment as a fire fighter, police officer, or academy trainee.

....

(d) A fire fighter or police officer who was appointed in substantial compliance with this chapter and who serves the entire probationary period automatically becomes a full-fledged civil service employee and has full civil service protection.

Local Gov't Code § 143.027(a), (d). We note, however, that section 143.089(a) requires the civil service director to maintain a personnel file on each "police officer." Likewise, section 143.089(g) states that a police department may maintain a personnel file on each "police officer." Both subsections refer to "police officer." Therefore, if section 143.089(g) applies to a probationary officer, as you assert, then section 143.089(a) would also apply. Section 143.003 defines a police officer as a member of a police department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under other sections of chapter 143.

As you state that the department maintains a section 143.089(g) file on the officer in question, we can assume that this officer was appointed in substantial compliance with chapter 143. Thus, although information regarding the misconduct of this officer that resulted in disciplinary action in the department's personnel files is confidential under section 143.089(g), the information regarding the misconduct of this officer that resulted in disciplinary action must also be maintained in the civil service personnel file and is not confidential under section 143.089(a). The department must refer the requestor to the civil service director as required under section 143.089(g).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

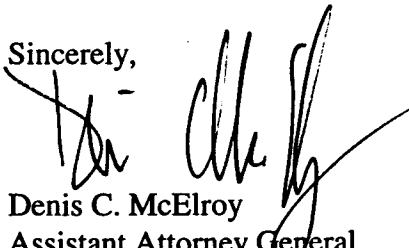
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 195544

Enc. Submitted documents

c: Mr. Jose Luis Soliz
4310 Centennial Court
Laredo, Texas 78046
(w/o enclosures)